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5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA
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8 BRETT PRIMACK,
9 Plaintiff(s),

10 v.

11 OHIO SECURITY INSURANCE
12 COMPANY, et al.,
Defendant(s).

Case No.: 2:18-cv-00561-APG-NJK

Order

[Docket No. 22]

13 Pending before the Court is a motion to quash subpoenas and for a protective order. Docket
14 No. 22. For the reasons discussed more fully below, the motion is hereby **DENIED**.

15 “[I]t is useful to reiterate a settled and universally recognized proposition: a party is not
16 empowered to grant itself, *de facto*, the relief it seeks from the Court by delaying in filing a motion
17 to such an extent that it cannot be resolved prior to the scheduled event.” *Nationstar Mtg., LLC v.*
18 *Flamingo Trails No. 7 Landscape Maintenance Assoc.*, 316 F.R.D. 327, 336 (D. Nev. 2016). “The
19 odor of gamesmanship is especially pronounced in the context of discovery disputes where it
20 appears parties routinely seek to delay their discovery obligations by filing [a] motion for
21 protective order on the eve of a ... noticed deposition.” *Cardoza v. Bloomin’ Brands, Inc.*, 141
22 F.Supp.3d 1137, 1141 (D.Nev.2015); *see also Caraway v. Chesapeake Exploration LLC*, 269
23 F.R.D. 627, 628 (E.D.Tex.2010) (decrying the filing of a motion for protective order the evening
24 before a deposition as embodying tactics “dredged up from the cesspool of ‘Rambo’ litigation
25 [that] cannot be countenanced” and as an improper attempt to “present an opponent with a *fait*
26 *accompli*”). “When an attorney knows of the existence of a dispute and unreasonably delays in
27 bringing that dispute to the Court’s attention until the eleventh hour, the attorney has created the
28 emergency situation and the request for relief may be denied outright.” *Id.* at 1143. For example,

1 a motion seeking relief from a deposition has been denied as untimely when the attorney had three
2 weeks' notice of the deposition, but filed the motion for relief from that deposition three days
3 before it was scheduled to take place. *Allstate Ins. Co. v. Nassiri*, 2011 WL 4905639, at *1 (D.
4 Nev. Oct. 14, 2011) (overruling objections to magistrate judge order).

5 The motion in this case seeks relief from depositions scheduled for today (November 29,
6 2018) and tomorrow (November 30, 2018). *See* Docket No. 22-1. The intent to take these
7 depositions has been known for weeks. *See, e.g., id.* at 16, 19 (proofs of service of amended
8 notices from November 12, 2018). Moreover, the parties' meet and confer efforts have been
9 purportedly completed for more than a week. Docket No. 22 at 2-3. Indeed, counsel threatened
10 to seek relief from the Court back on November 19, 2018. Docket No. 22-2. Nonetheless, the
11 instant motion was filed at 8:24 p.m. on November 28, 2018. *See* Docket No. 22 (notice of
12 electronic filing). In doing so, it is clear that counsel is attempting to grant himself the relief of
13 vacating the depositions. *See, e.g.,* Docket No. 22-4 (advising opposing counsel that the motion
14 was filed after business hours but before the time set for the deposition and, as such, purporting to
15 provide a "courtesy" notice so that opposing counsel can avoid incurring unnecessary court
16 reporter costs and "make other use of the time that would otherwise be occupied by these
17 depositions").¹

18 Given these circumstances, the instant motion is untimely and is hereby **DENIED**. The
19 depositions shall proceed as scheduled, and **any failure to appear may result in the imposition**
20 **of sanctions**.

21 IT IS SO ORDERED.

22 Dated: November 29, 2018

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Nancy J. Koppe
United States Magistrate Judge

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26 ¹ Counsel's belief is misplaced. The filing of a motion is not sufficient to avoid appearing
27 for a deposition and, instead, only a court order excusing that appearance will suffice since it "is
28 for the court, not the deponent or his counsel, to relieve him of the duty to appear." *Flamingo*
Trails, 316 F.R.D. at 336-37 (quoting *Pioche Mines Consol., Inc. v. Dolman*, 333 F.2d 257, 269
(9th Cir. 1964)).